IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5615 of 2006
Date of Decision : 20.9.2007

Tejinder Kaur

….Petitioner

Vs.

Kishan Singh and others

…. Respondents

Present: Mr.V.G.Dogra, Advocate
for the petitioner.
Mr.Atul Nehra, Advocate
for respondent No.1.

Vinod K.Sharma, J.

The petitioner has challenged the order passed by the learned Additional Civil Judge (Sr.Divn.) Nakodar, vide which an application moved by respondent-plaintiff for leading evidence in rebuttal, was allowed.

The plaintiff-respondent moved an application on 21.2.2006 with a prayer to lead evidence in rebuttal. The plaintiff-respondent sought to summon the Head Registration Clerk, D.C.Office, Jalandhar alongwith sale deed bearing document No.2203 dated 6.2.1985, sale-deed bearing document No.570 dated 2.6.1987, sale-deed dated 4.8.1987, sale-deed bearing document No.1542 dated 9.11.1990 executed by Resham Singh son of Charan Singh in favour of different persons. The plaintiff-respondent also sought permission for allowing the hand-writing expert to take photographs. It was also the case of the plaintiff-respondent that the official of D.C. Office, Jalandhar has brought the original copies and that the agreement to sell dated 30.7.1990 is basis of the suit between the parties. It was also prayed that Arvind Sood, witness who was present, be

permitted to take the photographs of the same for the purpose of rebuttal evidence.

The plea of the defendant-petitioner was that onus to prove the issue as to whether Resham Singh deceased executed the agreement dated 30.7.1990 and received Rs.35,000/- was on the plaintiff, who availed number of opportunities and finally closed his evidence on 11.3.1990; the petitioner-defendant had already led evidence to rebut the evidence led by the plaintiff-respondent. It was claimed that the plaintiff-respondent cannot be permitted to lead evidence in rebuttal on the issues when the burden of proof was on the plaintiff-respondents. It was claimed that the application was not maintainable. It was also claimed that the plaintiff wanted to prove the signatures from the sale-deeds of Resham Singh, but no original document was called for comparison and therefore, secondary evidence of the same could not be permitted. The application was said to be vague and it was claimed that original sale-deed was not produced and therefore, application be dismissed.

Learned trial Court allowed the application observing that the suit was based on agreement to sell dated 30.7.1990 and the plaintiff-respondent has led his evidence in affirmative and closed the same. The petitioner-defendant examined the expert witness besides other evidence. It was also observed that the plaintiff-respondent got prepared the report of expert witness after obtaining specimen from the sale deeds executed by Resham Singh. The record was not secondary evidence but the primary evidence as the original copy is retained in the office of Tehsildar at the time of registration. It was further observed by the learned trial Court that the proposed evidence was material to decide the controversy involved in

the suit. Therefore, mere technicalities of law could not be used to obstruct the plaintiff-respondent to produce such kind of evidence based on the documents.

Mr.V.G.Dogra, learned counsel appearing on behalf of the petitioner-defendant has challenged the order by placing reliance on the judgment of this Court in the case of **Surjit Singh and others vs. Jagtar Singh and others AIR 2007, P & H 1,** wherein this Court has been pleased to lay down as under:-

> "In our opinion, Order 18, Rule 3 of the CPC would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. Accepting such an interpretation would be to ignore a vital part of Order 18, Rule 3 of the CPC. The rule clearly postulates that the party beginning, may at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties. No matter how liberally a provision in the statute is required to be interpreted by interpretation, it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt.Jaswant Kaur (AIR 1983 P& H 210) (supra). It has been held that if a statement is made by the Advocate for the plaintiff that "the plaintiff closes its evidence in the affirmative only", the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are therefore, unable to agree with the observations made by the learned single Judge in the case of Kashmir Kaur (supra) that he is entitled to lead evidence in

rebuttal as a matter of right. In our opinion, this observation runs contrary to the observations of the Division Bench in Jaswant Kaur's case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the observations of the learned single Judge in the case of M/s Punjab Steel Corporation (AIR 2001 P & H 331) (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned single Judge run contrary to the law laid down by the Division Bench in the case of Smt.Jaswan Kaur (supra). No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of Jaswant Kaur (supra) and R.N.Mittal, J. in National Fertilizers Ltd. (AIR 1982 P& H 432)(supra)."

Mr.Atul Nehra, learned counsel appearing on behalf of respondent No.1 vehemently argued that Hon'ble Division Bench while deciding the case of Surjit Singh **(**supra) has not taken note of High Court Rules and Orders Vol.I, Chapter 21 wherein, it has been laid down as under:-

"**39. Order XVIII, Rule 2** –

Statement and production of evidence.- (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any), and may then address the Court generally on the whole case

3) The party beginning may then reply generally on the whole case.

Explanation 1. – Nothing in this rule shall effect the jurisdiction of the Court of its own accord or on the application of any party for reasons to be recorded in writing, to direct any party to examine any witness at any stage.

Explanation II. – This expression "witness" in explanation I shall include any party as his own witness. (High Court Notification No.175-R/XI-Y- 13, dated 9th June, 1942)."

The contention of the learned counsel for respondent No.1 was that Explanation [I] really lays down that jurisdiction of the Court to examine any witness at any stage on any issue on its own accord or on application of the party cannot be taken away and therefore, the learned trial Court was justified in allowing the application moved by the plaintiff-respondent.

Learned counsel for the respondent has placed reliance on the judgment of this Court in **Smt. Kashmir Kaur vs. Smt.Bachan Kaur and another 2000 (1) PLR 606** to contend that whole of the judgment does not stand overruled. However, this contention of the learned counsel for the respondent, cannot be accepted in view of the judgment of this Court in Surjit Singh's case (supra) specifically overruling this judgment.

Learned counsel for the respondent thereafter placed reliance on the judgment of Division Bench of this Court in the case of **Jagdev Singh and others vs. Darshan Singh and others 2007 (1) RCR (Civil) 794** to contend that this Court has been pleased to lay down that for considering the right of the plaintiff to lead evidence in rebuttal on issues the onus of proof of which was on the plaintiff, the facts and circumstances of each case are to be seen. The contention of the learned counsel for the petitioner that law laid down in Surjit Singh's case (supra) thus, stood diluted and therefore, the right of the plaintiff-respondent to lead any evidence in rebuttal, cannot be totally barred. Learned counsel appearing on behalf of the respondent further placed reliance on the judgement of this court in the case of **Basant Raj vs. Kaushal Kishore 2005 (3) Civil Court Cases 269 (P&H)** to contend that the additional evidence can be allowed, if the court feels that it is necessary for bringing on record the clear picture. The contention of the learned counsel for the respondent was that in this case, the Court had taken note of the High Court Rules and Orders, as referred to above. He further placed reliance on the judgment of Hon'ble Supreme Court in the case of **Salem Advocate Bar Association, Tamil Nadu vs. Union of India 2005(3) Civil Court Cases 420** to contend that though provision for leading additional evidence has been deleted still the court has inherent power to allow the parties to lead additional evidence. Thus, it was contended by the learned counsel for the respondent that once there was jurisdiction with the Court below to allow additional evidence, the order cannot be interfered with in exercise of revisional jurisdiction.

The learned counsel for the petitioner has rightly challenged the order passed by learned trial Court by placing reliance on the judgment of this Court in the case of **Surjit Singh and others (supra)** wherein, it has been authoritatively laid down that a party cannot be permitted to lead evidence in rebuttal on an issue onus of which is on the said party. In the present case, the evidence in affiramtive has already been led by the plaintiff-respondent on the issue and therefore, there was no justification with the learned courts below to have allowed the application for leading evidence in rebuttal.

The contentions raised by the learned counsel for the respondent cannot be accepted. The High Court Rules and Orders merely lay down that the jurisdiction of the Court to examine the witnesses at any stage, cannot be restricted. The said rule does not in any manner go contrary to the judgment of Division Bench of this Court in the case of **Surjit Singh and others (supra).** The authorities relied upon by the petitioner also deal with the right of the Court to allow the party to lead additional evidence with respect to a fact which was not within his knowledge or which could not be known in spite of due diligence. However, the right to lead evidence in rebuttal is with respect to an issue which was already within the knowledge of the party and therefore, the Division Bench of this Court come to the conclusion that the party cannot be allowed to lead evidence in rebuttal on issue, the burden which is on the said party. The learned trial Court therefore, was not justified in permitting the plaintiff-respondent to lead evidence in rebuttal to fill in lacuna. This Court is bound by the decision of Division Bench of this Court in the case of **Surjit Singh and others (supra).**

Consequently, this revision petition is allowed and the impugned order is set aside and the application moved by the plaintiff-respondent for leading evidence in rebuttal is ordered to be dismissed.

[**Vinod K.Sharma]**
Judge

20.09.2007
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